

BEFORE THE  
DIVISION OF MEDICAL QUALITY  
MEDICAL BOARD OF CALIFORNIA  
DEPARTMENT OF CONSUMER AFFAIRS  
STATE OF CALIFORNIA

In the Matter of the Petition )  
for Modification of Probation of: )  
 )  
TODD DUANE BAILEY, M.D. )  
1873 Klamath River Drive )  
Rancho Cordova, CA 95670 )  
 )  
Certificate No. A-15069 )  
 )  
 )  
Petitioner. )  
\_\_\_\_\_ )

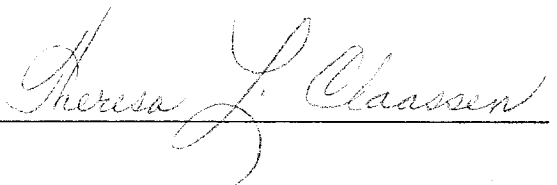
OAH No. N-10138

DECISION

The attached Proposed Decision of the Administrative Law Judge is hereby adopted by the Medical Board of California as its Decision in the above-entitled matter.

This Decision shall become effective on May 18, 1994.

IT IS SO ORDERED April 19, 1994.

  
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PROPOSED DECISION

On November 18, 1993, in Sacramento, California, M. Amanda Behe, Administrative Law Judge, Office of Administrative Hearings, heard this matter.

Gail Heppell, Deputy Attorney General, represented the Medical Board of California.

Petitioner represented himself.

Evidence was received, the record was closed and the matter was submitted.

## FINDINGS OF FACT

### I

Todd Duane Bailey, M.D., (hereinafter "petitioner") filed a Petition for Modification of Probation with the Medical Board of California (hereinafter "the Board") which he signed on May 24, 1993.

### II

Petitioner was issued Physician's and Surgeon's Certificate No. A-15069 on January 22, 1953.

### III

On April 24, 1989, Accusation No. D-3949 was filed against petitioner alleging violations of Business and Professions Code sections 2234(e) (dishonesty) and 2236 (unprofessional conduct - conviction of any offense substantially related to the qualifications, functions or duties of a physician and surgeon).

Effective October 26, 1990, petitioner's certificate was disciplined by Board Decision D-3949. That Decision adopted a STIPULATION signed by petitioner, who was represented by counsel in the defense of the Accusation, including the negotiation of the STIPULATION.

By that STIPULATION petitioner admitted every allegation of the Accusation including the following:

- "A. On or about July 11, 1988, respondent was convicted upon his plea of guilty of two counts of grand theft in violation of section 487.1 of the Penal Code. Respondent was fined \$100.00, ordered to pay restitution of \$25,000.00, serve 200 hours of community service, and placed on probation for three years.
- "B. The circumstances surrounding this conviction are as follows:
  - "(1) On or about April 20, 1988, respondent took \$10,000.00 from F. Y█████-B█████ for the sale of respondent's medical practice to F. Y█████-B█████.
  - "(2) Previously, on February 20, 1988, respondent took \$15,000.00 from J. Y█████ for the sale of respondent's medical practice to J. Y█████.
  - "(3) Respondent had previously sold his medical practice on April 17, 1987, to R█████ L. J█████."

By that STIPULATION petitioner further admitted cause for discipline existed pursuant to Business and Professions Code sections 2220, 2234(e) and 2236. By that STIPULATION petitioner and the Board agreed to the following discipline of his license:

"Certificate No. A-15069 ... is revoked; however, said revocation is stayed and respondent is placed on probation for five (5) years upon the following terms and conditions:

"1. Within 30 days of the effective date of this decision, and on a periodic basis thereafter as may be required by the Division or its designee, respondent shall undergo a psychiatric evaluation (and psychological testing, if deemed necessary) by a Division-appointed psychiatrist who shall furnish a psychiatric report to the Division or its designee.

".....

"Respondent shall not engage in the practice of medicine until notified by the Division of its determination that respondent is mentally fit to practice safely.

"2. Within 60 days of the effective date of this decision, respondent shall submit to the Division for its prior approval a community service program in which respondent shall provide free medical services on a regular basis to a community or charitable facility or agency for at least 8 hours a month, or the equivalent thereof annually, for the 60 months of probation."

Petitioner was also required by the STIPULATION to complete a course in Ethics, and an educational program of not less than forty hours per year.

#### IV

Petitioner testified that he does not wish to perform the remainder of the community service required by probationary term number 2, quoted above. In 1990, 1991 and 1992 petitioner performed 485½ hours of community service as a volunteer at Sutter-Oaks Nursing Center. He believes he should be released from that requirement because of the free care he has provided during the course of his licensed practice, such as accompanying search and rescue parties during rescue operations. The record does not disclose the dates and amount of time involved in those efforts, but all appear to pre-date the imposition of the probationary term. Community service antecedent to the Board's discipline is not

grounds to eliminate the current requirements of petitioner's probation.

The conviction and repeated fraudulent acts for profit which resulted in the discipline of petitioner's license were very serious matters which merited all of the terms of discipline imposed. Petitioner failed to establish by a preponderance of the evidence that the community service provision to which he agreed in 1990 should now be changed.

#### V

The present record does not display the results of the "psychiatric evaluation (and psychological testing, if deemed necessary) by a Division-appointed psychiatrist who shall furnish a psychiatric report to the Division or its designee." required by probationary term number 1, quoted above.

Petitioner's narrative statement submitted for the current proceeding contains the following:

"In Orange County in 1987, a 'gang' made me sell my practice to two different groups. They took all of that money and all of my family's money too, and took me to do their medical work so their gang members would not get caught by the police. They told me that my family and my grandchildren were at risk if I did not go along with them. I did their medical work until they finally let me go in January, 1988."

That statement, and petitioner's testimony, reflect unusual ideation strongly suggestive of the need for further evaluation. Petitioner's statements that he sold the same medical practice three times in a year because he was kidnapped by a gang is, at best, implausible. Moreover, his present assertions cannot be used to refute his conviction for grand theft. A collateral attack on a final conviction is not permitted.

#### DETERMINATION OF ISSUES

##### I

The Medical Practice Act, Business and Professions Code section 2307, provides that in the subject hearing all of the following may be considered:

"... all activities of the petitioner since the disciplinary action was taken, the offense for which the petitioner was disciplined, the petitioner's activities

during the time the certificate was in good standing, and the petitioner's rehabilitative efforts, general reputation for truth, and professional ability."

II

Petitioner has the burden of proving by a preponderance of the evidence that his petition should be granted.

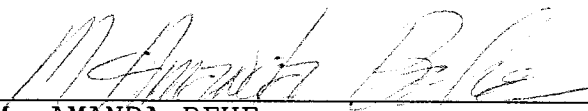
Petitioner has not met his burden of proof. The basis for the discipline of petitioner's certificate was serious and significant. Petitioner does not demonstrate any rehabilitation which would merit amending the terms of probation required by the STIPULATION to which he agreed.

ORDER

The Petition is denied.

Dated:

January 18, 1994

  
M. AMANDA BEHE  
Administrative Law Judge  
Office of Administrative Hearings